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No. 90-1265

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

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MICHAEL P. OSHATZ, PETITIONER

against

UNITED STATES OF AMERICA,

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION BY PETITIONER TO FILE A REPLY TO BRIEF IN OPPOSITION AND GENERALLY PROCEED IN FORMA PAUPERIS

Michael P. Oshatz, pro se
21 Cooper Road
Scarsdale, New York 10583
(914) 725-5363

PRAYER FOR RELIEF

Petitioner, Michael P. Oshatz, hereby makes application to file a Reply to the Brief For The United States In Oppsition (as provided for in Supreme Court Rules 15.6 and 24.4) and generally proceed in forma pauperis, pursuant to the provisions of Supreme Court Rule 39.

FACTS ON WHICH MOTION IS BASED

A. Compliance With Supreme Court Rules 33 and 38 To Date

Petitioner filed a Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit on February 5, 1991. The Petition was docketed in the Court as No. 90-1265. The Petition and the appendix thereto were produced, pursuant to the requirements of Supreme Court Rule 14.2, in conformity with Supreme Court Rule 33, relating to printing requirements. In addition, Petitioner remitted to the Su-

preme Court the appropriate docketing fee required by Supreme Court Rule 38.

B. Financial Inability to Continue to Comply With Supreme Court Rules 33 and 38

Petitioner borrowed the funds necessary to pay for photostatic reproduction, binding and service of the Petition and appendix, as well as the docketing fee required by the Court. The cost of reproduction far exceeded the original estimate and petitioner has not yet been able to pay the balance of the original cost. Consequently, and as more fully explained in the Declaration (prepared in compliance with the provi-psions of 28 U.S.C. §1746 and in the form prescribed by the Federal Rules of Appellate Procedure, Form 4) submitted herewith, petitioner is financially unable to produce a Reply to the Brief for the United States In Opposition in conformity with the provisions of Supreme Court Rule 33

or generally proceed pursuant to the provisions of Supreme Court Rules 33 and 38.

C. **Supreme Court Rule 39.2**

Petitioner is mindful of Supreme Court Rule 39.2 which provides, in part, that a motion such as this, with the accompanying Affirmation, ..."must be filed with the petition for a writ of certiorari...." The import of the provision is the Court desires to avoid unnecessary work which would be caused if either the petition or the motion and Affirmation arrived, prepared pursuant to Supreme Court Rule 39, without the other. It would appear Supreme Court Rule 39.2 does not contemplate a situation such as the one petitioner is now presenting to the Court. Petitioner prays the Court will consider granting this motion to be merely exercising its right to provide for circumstances that are not clearly provided for in its published rules.

CONCLUSION

Petitioner prays this motion, which incorporates by reference the contents of the Declaration submitted herewith, will be granted by the Court and that he will be allowed to file a Reply to the Brief For The United States In Opposition and generally proceed in forma pauperis.

Dated: Scarsdale, New York
April 11, 1991

Respectfully submitted,

Michael P. Oshatz, pro se
21 Cooper Road
Scarsdale, New York 10583
(914) 725-5363